

1 FINANCE AND ADMINISTRATION CABINET

2 KENTUCKY TEACHERS' RETIREMENT SYSTEM

3 (New Administrative Regulation)

4 102 KAR 1:320 Qualified domestic relations orders.

5 RELATES TO: KRS 161.700; KRS 161.310; 26 U.S.C. Section 414(p).

6 STATUTORY AUTHORITY: KRS 161.700; KRS 161.310

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of
8 Trustees of the Kentucky Teachers' Retirement System (KTRS) to promulgate all administrative
9 regulations for the administration of the funds of the retirement system. KRS 161.700 requires
10 the Board of Trustees of KTRS to promulgate administrative regulations setting forth the
11 requirements, procedures and forms for the approval and processing of qualified domestic
12 relations orders impacting the benefits of participants of the retirement system.

13 Section 1. Definitions. (1) "Alternate Payee" is defined by KRS 161.220(26).

14 (2) "Benefits" means, for purposes of this administrative regulation, a monthly service or
15 disability retirement allowance or refund payable at the request of a participant covered by
16 KTRS who terminates employment in a KTRS covered position prior to becoming eligible to
17 receive a retirement allowance.

18 (3) "Member" is defined by KRS 161.220(4).

19 (4) "Participant" is defined by KRS 161.220(24).

20 (5) "Qualified domestic relations orders" (QDRO) is defined by KRS 161.220(25).

21 Section 2. (1) A QDRO shall state the following:

1 (a) The member's name, KTRS member identification number and last-known mailing
2 address;

3 (b) The alternate payee's name and last-known mailing address;

4 (c) Whether the order applies to an active account from which the member is not
5 currently receiving a retirement allowance, or to a retired account from which the member is
6 currently receiving a retirement allowance and the date on which the member retired the account;

7 (d) The date of marriage;

8 (e) The date of decree of dissolution of marriage;

9 (f) That the order is for the purpose of property division;

10 (g) The amount of the participant's monthly retirement allowance or termination refund
11 to be paid by KTRS to the alternate payee as either;

12 (i) A fixed dollar amount; or

13 (ii) The percentage calculated under Section 7(1) of this regulation;

14 (h) When payments shall begin;

15 (i) When payments shall cease;

16 (j) That the alternate payee shall be paid in the same form as the participant;

17 (k) Whether the alternate payee spouse shall share in the participant's cost of living
18 adjustments if the QDRO awards a fixed dollar amount to such alternate payee;

19 (l) Who shall be responsible for payment of the KTRS processing fee; and

20 (n) All information required on the form incorporated by reference in this administrative
21 regulation.

22 (2) A QDRO shall be:

23 (a) Signed by the judge of a court of competent jurisdiction;

1 (b) Filed with the clerk of the court; and

2 (c) Certified by the clerk of the court.

3 Section 3. Administrative Provisions. (1) Thirty (30) days prior to filing the QDRO
4 with KTRS, the participant or alternate payee shall present a written request for benefits
5 information for divorce purposes. The participant, alternate payee or third party, including the
6 party's legal counsel, shall provide a completed KTRS Authorization for Release of Information
7 form with the request.

8 (2) For a QDRO directed to an active account from which a participant is not currently
9 receiving a retirement allowance, KTRS shall forward a Report for Current Year Earnings and
10 Contributions form to the participant's employer upon receipt of the written request and release.
11 The employer shall return the completed form to KTRS within ten (10) work days.

12 (3) If the QDRO is directed to an account from which the participant is not currently
13 receiving a retirement allowance, KTRS shall not project future earnings or future service.
14 KTRS shall provide:

15 (a) The participant's total accrued service credit, including service credit purchased
16 during the marriage, and the member account balance, including the total amount of accrued
17 contributions and interest, as posted at the end of each fiscal year during the marriage and for
18 which an employer annual report has been received by KTRS and for which the member has not
19 received a refund; and

20 (b) An estimate of the monthly retirement allowance the participant would receive if the
21 participant retired without a statutory reduction of the basic retirement allowance based upon the
22 participant's final compensation and total accrued service credit as of the date of dissolution of
23 marriage.

1 (4) If the participant has retired, KTRS shall provide the amount of the participant's
2 monthly retirement allowance and the participant's total accrued service credit, including any
3 service credit purchased during the marriage.

4 (5) The participant or alternate payee or legal counsel shall submit a Qualified Domestic
5 Relations Order to Divide Kentucky Teachers' Retirement System Benefits form to KTRS for
6 review forty-five (45) days prior to filing the QDRO with the court. If more than one of
7 participant's accounts is subject to classification and division as marital property, a separate
8 QDRO shall be issued for each KTRS account.

9 (6) KTRS shall not review the QDRO unless it is accompanied by the following:

10 (a) The KTRS Administrative Rule Compliance form which has been approved by both
11 the participant or alternate payee or their legal counsel;

12 (b) A \$50.00 non-refundable processing fee, by certified check or on the attorney's trust
13 account, made payable to the Kentucky State Treasurer, except that a processing fee shall not be
14 charged for a QDRO issued solely for child support;

15 (c) The KTRS Confidential Information form, which shall include the participant's and
16 alternate payee's address, Social Security number and date of birth;

17 (d) Copies of the participant's and alternate payee's Social Security cards;

18 (e) Authorization for Direct Deposit form; and

19 (f) Any other documents that are required to confirm additional service credit purchased,
20 or sought to be purchased, for retirement calculation purposes under KRS 161.220 through
21 161.716, including Military Service Certification and Affidavit form, with a copy of discharge
22 papers.

1 (7) Within twenty (20) days of receipt of the QDRO, KTRS shall notify the participant
2 and alternate payee in writing whether the QDRO meets KTRS requirements. If the participant
3 or alternate payee is represented by legal counsel, this notice shall instead be provided to their
4 legal counsel.

5 (8) If the QDRO does not meet KTRS requirements, KTRS shall notify the participant
6 and alternate payee in writing, identifying those provisions which are not in compliance and the
7 amendments needed to bring the QDRO into compliance. If the participant or alternate payee is
8 represented by legal counsel, this notice shall instead be provided to their legal counsel. The
9 amended QDRO shall be submitted to KTRS for review and approval prior to filing with the
10 court.

11 (9) If the QDRO is subsequently amended before filing with the court, the amended
12 QDRO shall be resubmitted to KTRS with a \$25.00 non-refundable processing fee.

13 (10) Following approval by the court, the participant, alternate payee or legal counsel
14 shall file a certified copy of the QDRO with KTRS. The QDRO shall not become effective until
15 the certified copy is received by KTRS. Upon receipt of the certified copy, KTRS shall
16 designate the participant's account for implementation of the QDRO. While a separate account
17 balance shall not be maintained for the alternate payee, a separate payroll account shall be
18 established. Payments to the alternate payee shall commence in the calendar month following
19 the date that a certified copy of the QDRO is received by KTRS.

20 (11) If KTRS is enforcing a QDRO which is subsequently amended or terminated by the
21 court, the participant, alternate payee or legal counsel shall submit a certified copy of the
22 amended QDRO or order of termination to KTRS for processing.

1 (12) The participant, alternate payee or legal counsel shall not submit a QDRO which is
2 not final and under consideration by an appellate court.

3 (13) The alternate payee shall be responsible for notifying KTRS of any change in name
4 or mailing address. KTRS shall provide a Name or Change of Address form upon request.
5 KTRS shall contact the alternate payee at the last known mailing address on file to notify the
6 alternate payee when an annuity benefit subject to the QDRO becomes payable. Other than
7 sending such notice, KTRS shall have no duty or responsibility to search for, or locate, the
8 alternate payee. If the notification sent to the alternate payee's last known address is returned
9 due to the alternate payee's failure to notify KTRS of an address change, within sixty (60) days
10 of the return of the notification to the alternate payee, the amounts otherwise payable to the
11 alternate payee shall be paid to the participant until a new address is provided by the alternate
12 payee. KTRS shall have no liability to the alternate payee with respect to such amounts paid to
13 the participant.

14 (14) The participant shall be responsible for notifying KTRS in writing of an event
15 which causes benefit payments to the alternate payee spouse, child or other dependent, to cease.
16 The participant shall provide KTRS with a certified copy of the alternate payee's death certificate
17 or marriage certificate. The alternate payee shall also be responsible for notifying KTRS in
18 writing of the alternate payee's remarriage if, under the terms of the QDRO, that is an event that
19 terminates the alternate payee's right to receive any payments. KTRS shall not be responsible for
20 payments made to the alternate payee until it is given timely written notice of any event
21 terminating those payments.

22 Section 4. A QDRO may apply to a participant's:

23 (1) Retirement allowance;

(2) Disability retirement allowance; or

(2) Termination refund.

Section 5. A QDRO shall not apply to a participant's:

(1) Survivor annuity that becomes payable after the member's death;

(2) Survivor benefits that become payable after an active contributing member's death;

(3) Accounts that are not vested at the time of the dissolution of marriage;

(4) Life insurance benefit;

(5) Refund as a result of an error;

(6) Refund of an active or retired account in response to a member's death:

(7) Health insurance; and

(8) Any other payment or benefit not described in Section 4 of this administrative regulation.

Section 6. If an alternate payee has under the terms of the QDRO been awarded a share of the participant's annuity benefits and dies before the participant dies, retires or withdraws his account, the entire remaining account value shall be restored to the participant.

Section 7. Calculation and payment. (1) The portion of the participant's benefits payable to the alternate payee shall be fifty (50%) percent of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), multiplied by the following fraction:

(a) The numerator of which shall be the participant's total full and fractional years of creditable KTRS service earned during the marriage, including service credit purchased during the marriage; and

1 (b) The denominator of which shall be the participant's total full and fractional years of
2 KTRS service credit through the date of dissolution of the marriage.

3 (2) If the participant is or will be receiving a disability retirement allowance, the
4 participant's total annuity benefit for purposes of this administrative regulation shall be
5 calculated under the service retirement formula established under KRS 161.661(5), even if the
6 entitlement period described under KRS 161.661(3) and (4) has not expired.

7 (3) If the QDRO is directed to an account from which the participant is not receiving a
8 retirement allowance, the participant's total annuity benefit shall be calculated without inclusion
9 of the discounts required under KRS 161.620(1)(b) and (d). However, if at the time of
10 retirement the participant is subject to discounts required under KRS 161.620(1)(b) and (d), and
11 if the QDRO establishes a set dollar amount to be withheld from the retirement benefits that are
12 payable to the participant and to be paid to the alternate payee, KTRS shall reduce the amount to
13 be paid to the alternate payee under the QDRO by the amount of the discounts. KTRS shall
14 increase the amount paid to the alternate payee in amount equal to any discounts that are
15 subsequently eliminated as the result of the participant's return to work after retirement under the
16 provisions of KRS 161.605(11), upon the participant's resumption of receipt of retirement
17 benefits.

18 (4) If the QDRO is directed to an account from which the participant is not receiving a
19 retirement allowance, and the participant at the time of issuance of the QDRO is not eligible for
20 calculation of his total annuity benefit based on his three (3) highest salaries as provided under
21 KRS 161.220(9), then his total annuity benefit shall be calculated on his five (5) highest salaries.

(5) The participant may select any retirement option but payment to the alternate payee shall be measured as though the participant had chosen Option I, Straight Life Annuity with Refundable Balance, under KRS 161.620 and 102 KAR 1:150.

Section 8. Any person who attempts to make KTRS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the annuity benefits payable to the participant shall be liable to KTRS for its costs and legal fees.

Section 9. KTRS and its staff shall have no liability for making or withholding payments in accordance with any of the provisions of this administrative regulation.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KTRS Authorization for Release of Information, 14 July 2010;

(b) KTRS Report for Current Year Earnings and Contributions, 14 July 2010;

(c) Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits, 14 July 2010;

(d) KTRS Administrative Regulatory Compliance, 14 July 2010;

(e) KTRS Confidential Information, 14 July 2010;

(f) KTRS Authorization for Direct Deposit, 14 July 2010;

(g) KTRS Military Service Certification and Affidavit, 14 July 2010; and

(h) KTRS Name or Change of Address, 14 July 2010;

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

102 KAR 1:320 Qualified Domestic Relations Orders.

APPROVED:

Date

Ms. Barbara Sterrett, Chairperson
Teachers' Retirement System of the State of Kentucky

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 24 August 2010, at 9:00 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 31 August 2010.

Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, telephone (502) 848-8508, facsimile (502) 848-8508.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Reg No. 102 KAR 1:320

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements, procedures and forms for the approval and processing of qualified domestic relations orders ("QDRO") by Kentucky Teachers' Retirement System ("KTRS").

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and ensure compliance with the amendments to KRS 161.700.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by (1) setting forth the procedures and timelines to be followed in filing a QDRO with KTRS, (2) setting the filing fees, (3) providing the formula for calculating the amount to be paid to the alternate payee, and (4) incorporating the forms required by KTRS.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by informing KTRS participants, their alternate payees, legal counsel and the courts what is required to expedite approval and implementation of a QDRO.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to participants and alternate payees of participants of KTRS who are subject to a qualified domestic relations order.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The participants, their alternate payees and legal counsel will have to adhere to the requirements for filing a QDRO for approval by KTRS, including the timeframes for filing the KTRS QDRO forms, payment of the processing fee, and utilization of the formula for calculation of the alternate payee's share.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be a \$50.00 initial processing fee and a \$25.00 processing fee for amended QDROs to be paid by the participant, the alternate payee or shared by both parties as ordered by the court.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Alternate payees will be permitted to access participants' retirement benefits which were previously exempt from distribution during dissolution of marriage.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: Continuing costs will be determined by the number of QDROs filed with KTRS and cannot be quantified at this point.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of KTRS incurred in processing QDROs will be paid via the processing fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation establishes the fees to be assessed for processing QDROs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes a \$50.00 initial processing fee and a \$25.00 processing fee for amended QDROs.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering is not applied, as all participants and alternate payees of participants are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 102 KAR 1:320

Contact Person: Robert B. Barnes

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2 – 4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Teachers' Retirement System.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.700, KRS 161, 310.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The additional revenue generated by this regulation will be dependent upon the number of QDROs filed with KTRS and cannot be quantified at this time.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Future revenue generated by this regulation will be dependent upon the number of QDROs filed with KTRS and cannot be quantified at this time.

(c) How much will it cost to administer this program for the first year? The cost in terms of staff time for processing the QDROs will depend upon the number of orders received.

(d) How much will it cost to administer this program for subsequent years? Future cost in terms of staff time for processing QDROs will depend upon the number of orders received and cannot be quantified at this time.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

**SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE**

- (1) KTRS Authorization for Release of Information/QDRO form.
- (2) KTRS Report for Current Year Earnings & Contributions/QDRO form.
- (3) Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits form consisting of six (6) pages.
- (4) KTRS Administrative Regulatory Compliance/QDRO form.
- (5) KTRS Confidential Information/QDRO form.
- (6) KTRS Authorization for Direct Deposit/QDRO form.
- (7) KTRS Military Service Certification and Affidavit/QDRO form consisting of two (2) pages.
- (8) KTRS Name or Change of Address/QDRO form.